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--A community organization dedicated to preserving the character, charm and historical resources of the Mission Hills neighborhood.

October 20, 2025

Historic Resources Board
C/O Kelley Stanco Deputy Director
Environmental Policy & Public Spaces Division
City of San Diego, City Planning Department
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Re: HRB Meeting – October 23, 2025
Item-6: Preservation and Progress Package A

Dear HRB Chair Byers and Board Members,

Attached are comments in response to the City's Preservation and Progress (P&P) Initiative, Package A. We support the goals of the P&P initiative and the vast majority of amendments proposed by Package A.

We remain concerned with several aspects of Package A, including (1) the failure to remove the "supermajority" voting requirement for designations, (2) the asymmetrical appeal rights for non-designations, and (3) the new overly broad grounds for appeal. We urge the HRB to not recommend adoption of Package A until the revisions discussed herein are incorporated.

Please note that these comments were prepared without the benefit of City Staff's "Benchmarking Study," which informs many of City staff's recommendations and which has not been released in the nine (9) months since staff presented its summary of the study.

(1) <u>The "supermajority" voting requirement makes San Diego an outlier and enshrines inequity in the historic resource regulations and should be removed.</u>

- **The normative standard for designation decisions in the largest California cities is by majority vote.** See Los Angeles Charter, Art. 1, § 22.171.5 (powers of Cultural Heritage Commission shall be exercised by and adopted by "majority vote"); San Francisco Planning Code, Art. 10, §1004.3 ("The Board of Supervisors may approve, modify and approve, or disapprove the designation by a majority vote of all its members."); Long Beach Municipal Code, Title 2, § 2.63.060 (b)(2)(indicating recommendation for designation "shall be by a majority vote of the [Cultural Heritage] Commission."). Neither the California Office of Historic Preservation nor the National Park Service recommend a supermajority vote for local designation.

- **Adequate safeguards exist to ensure fair and objectively accurate designations, which makes retention of the supermajority vote superfluous**. These safeguards include professional staff analysis, the requirement that the Historic Resource Board (HRB) is comprised of experts, public notice and hearing requirements, and appeals of both designation and non-designation decisions. There is no valid reason to treat historic preservation as an exceptional decision when these multiple safeguards exist.

- **Retention of the supermajority vote undermines procedural fairness and discourages preservation of meritorious resources.** A supermajority vote requirement creates a minority veto problem, wherein a small block of members can prevent a designation even when staff and a majority of board members believe the nomination should be approved. The supermajority vote requirement has blocked multiple designations over the years when board member turn-out was low, but a simple majority agreed the resource was significant. See, e.g., <u>William & Bertha Niemann Homestead</u>, July 22, 2021, Item #7 (votes 5-1-2 in favor, with two absences and two recusals); <u>820 Fort Stockton Drive,</u> September 28, 2023, Item #1 (5-3-0 in favor, two recusals and one absent); <u>Alywn & Emily Patterson House</u>, March 28, 2024, Item # 6 (5-3-0 in favor, two absent); <u>3320 Dale Street</u>, November 24, 2024, Item #1 (5-3-0 in favor, two absent); <u>Leona & Albert Winger Bungalow Court,</u> January 23, 2025, Item #1 (5-2-0 in favor, with three absent); <u>2726 Angell Avenue</u>, April 24, 2025, Item #2 (votes 5-2-0 in favor, with three absent).

- **The supermajority vote requirement is contrary to principles of equity embodied by both the P&P Initiative and the Land Development Code.** The P&P Initiative aims to make the historic resources program more equitable, and the overall intent of the Land Development Code is to ensure fairness and encourage public participation. See SDMC §111.0102 ("The intent of these procedures and regulations is to facilitate fair and effective decision-making and to encourage public participation."). Yet, the supermajority requirement has worked to preclude likely meritorious designations because of arbitrary absences of board members – a fundamentally unfair result.

- **Staff's rationale for retaining the "supermajority" requirement is unfounded**. At the HRB Policy Subcommittee meeting on October 13, 2025, Staff justified retaining the more stringent supermajority voting requirement by equating historic designation to a "land use decision." But historic designation is <u>not</u> a land use decision. Land use decisions lay with the Planning Commission and City Council, which retain the authority to allow removal or demolition of historic resources through the discretionary permitting process.

Conclusion & Recommendation: For the foregoing reasons, Package A should not be adopted unless the supermajority voting requirement is removed from SDMC §123.0202(e) and only a majority vote is necessary for an action to designate.

(2) The appeals process amendments, SDMC § 123.0203(a) and (b), create asymmetrical appeal rights that are fundamentally unfair.

- **The proposed appeal process raises Equal Protection Concerns under the U.S. and California Constitutions.** The Equal Protection Clause of the U.S. and California Constitution protects against uneven application of the laws. Thus, when similarly situated groups are treated differently under a statutory scheme and a non-suspect class is involved, the government must show the scheme has a rational basis.

  Here, the amendment treats two similarly situated groups differently: Appellants who are record owners of property and appellants who are not (all other "interested persons" and applicants), with only the former group being permitted full appeal rights of both designations and non-designations and the latter being permitted only appeals of designations.[1] Thus, disparate treatment of similarly situated groups exists.

  This classification is not rationally related to the purpose of the historic resource regulations, which is to promote the preservation of historical resources. Instead, limiting appeals of non-designations to only record property owners works against this goal by precluding potentially legitimate claims of error on appeal and allowing potentially meritorious resources to go unprotected. Precluding meaningful judicial review and relief—especially in the instance where the appellant brought the nomination but is not the record owner and is an aggrieved party—cannot realistically be a legitimate state interest. Moreover, the proposed disparate treatment bears no relationship to any factual circumstances. As originally proposed, this amendment limiting appeals of non-designations to record property owners was to "reduce misuse and delays."[2] Yet, the disparate classification does not meet this end, since the same "delays" will stem from appeals of affirmative designation decisions and there remains a potential for abusive

[1] The SDMC §113.0103 defines "interested person," to mean "person who spoke at a public hearing from which an appeal arose or a person who expressed an interest in the decision in writing to that decision maker before the close of the public hearing."

[2] Members of the HRB's Policy Subcommittee unanimously adopted the asymmetrical appeal process, disallowing appeals of non-designations from applicants or interested parties, at the August 7, 2025, subcommittee meeting after presentation by Jennifer Ayala of Nexus Planning & Research. In her written comments, Ms. Ayala requested that appeals of non-designations be limited to record property owners, as follows:

> Appeals of Non-Designations – Please limit appeals of non-designations to property owners or voluntary nominations to reduce misuse and delays, which supports the goal of making historic determinations more efficient and protecting truly significant resources. [See Public Correspondence of Jennifer Ayala attached to August 11, 2025 Meeting, available at https://www.sandiego.gov/sites/default/files/2025-08/20250811_preservation_progress-package-a-part-1_comments-from-nexus.pdf.]

appeal practices of both designations and non-designations.[3] In other words, the disparate classification does not fix the alleged problem it was proposed to address and, thus, cannot be rationally related to the government interest of reducing delays and preventing malicious appeals. In sum, the disparate classification scheme is not rationally related to a legitimate government purpose and arguably violates the Equal Protection Clause.

Of note, at the HRB Policy Subcommittee meeting on October 13, 2025, several board members expressed the view that the protection of "private property rights" was a legitimate government interest that permits property owners to have superior appellate rights as proposed in the amendments. Ensuring finality of non-designation decisions by only providing appeals to record owners is not a legitimate government interest in this context: rather, it functions to deny interested and possibly aggrieved parties of meaningful review. And, even if protecting private property rights is a legitimate government interest, the proposed amendment does not provide a rational basis for meeting that end because individual property rights are not protected in the same way in the instance an affirmative designation is made: such decisions are appealable by interested parties. Allowing only record owners to appeal non-designations to allegedly protect their property rights is, thus, a pretext for disfavoring designation of historic resources.[4]

- **The amendment is contrary to the intent and purpose of both the Land Development Code and the Preservation and Progress Initiative.** Giving appeal rights for non-designations only to record property owners favors developers and property owners, because it precludes other "interested parties" (individuals, applicants, community and/or preservation groups who participated in the nomination or hearings) from appealing a non-designation and precludes them from public participation. In the instance the would-be appellant was an applicant before the HRB, the proposed language will block this aggrieved party's access to judicial review. This result is contrary to the purpose of the Land Development Code, which is expressly intended to "facilitate fair and effective decision-making and to encourage public participation," SDMC §111.0102, as well as the purpose of the P&P Initiative to ensure equity in the historic resource regulations.

Conclusion & Recommendation: An even-handed appellate procedure, where both interested parties and property owners can appeal non-designations, would be consistent with equal-protection principles and honor the purpose of both the Code and the P&P Initiative. Package A should not be adopted unless language allowing interested parties the right to appeal non-designations is added.

[3] The only abusive appeal practice in MHH's recent memory relates to the unmeritorious appeals of designation decisions by Clint Daniels, who regularly pulled items off the consent agenda and appealed affirmative designations to City Council. There are no facts to support abuse of appeals of non-designation decisions.

[4] When board members suggested a carve-out exception could exist allowing non-record owners to appeal non-designations of truly publicly significant properties, staff correctly noted that all historic resources are akin to a public resource and a decision to designate property historic is like an environmental decision wherein the decision-making body should only decide whether an environmentally sensitive resource exists. In this context, applicants and other interested parties should have the same access to the appeals process as record owners.

(3) The amendment to SDMC § 123.0203(e) should preclude submission of additional evidence after the 90-day period.

We support the proposed amendment allowing for submission of additional information in support of the appeal within 90 days of filing the appeal. The section should be further amended to preclude submission of additional information after the 90 calendar days. This will disallow an appellant from submitting additional information at, or immediately before, the hearing. Such "surprise" introduction of evidence is prohibited by most court rules and the rationale for prohibiting the introduction of such information applies equally to administrative adjudication. The additional proposed language is included below in blue:

> Upon the filing of the appeal, the appellant shall submit additional information in support of the stated grounds for appeal within 90 calendar days or the right to appeal will be forfeited and the decision of the Board to designate or not to designate shall become final. T~~t~~he City Clerk shall set the matter for public hearing ~~as soon as is practicable~~ no later than 90 calendar days after the date on which the additional information in support of the appeal is submitted by the appellant and shall give written notice to the property owner and the appellant of the time and date set for the hearing. Failure to hold the hearing within the time frames specified above shall not limit the authority of the City Council to consider the appeal. At the public hearing on the appeal, the City Council may by resolution affirm, reverse, or modify the determination of the Board and shall make written *findings* in support of its decision. **No additional information other than that information submitted within 90 calendar days of the filing of the appeal shall be considered at the hearing.**

Conclusion & Recommendation: Package A should not be adopted unless language precluding the introduction of information after 90 days of the date the appeal was filed is added.

(4) The appeals process amendment, SDMC § 123.0203(a)(3) and (b)(3), provides a new ground for appeal that potentially allows City Council to supplant the HRB's designation determination with its own judgment or political preferences.

We do not support adding this new ground for appeal for the reason stated. Further, with respect to the appeal of a decision to not designate, the new ground that the decision "to not designate the property is a not supported by the information" constitutes a confusing double negative. The ground should be restated to indicate that "the designation is supported by the information provided to the Board, contrary to the Board's decision to not designate."

Conclusion & Recommendation: Package A should not be adopted unless the new ground for appeal in SDMC § 123.0203(a)(3) and (b)(3) is stricken. If the new ground is to be retained, SDMC § 123.0203(b)(3) should be revised to remove the double negative language.

(5) The proposed amendment to §143.1002, making Complete Communities Housing Solutions Regulations applicable to Ocean Beach Cottage Emerging Historical District, is unnecessary.

We do not support the proposed changes to add back developments to non-contributing resources in the Ocean Beach Cottage Emerging Historical District. Instead, the HRB should

move forward with the long-pending proposal to convert this district to a traditional district. Processing the conversion would eliminate the need for the amendment and bring this district in line with others. It is our understanding that Ocean Beach residents support this conversion.

Conclusion & Recommendation: Package A should not be adopted unless language subjecting Ocean Beach Cottage Emerging Historical District to Complete Communities is stricken.

Respectfully Submitted,

Mission Hills Heritage,
By: Robert Jassoy, President